IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9753 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKKUMAR DUDHABHAI DABHI

Versus

DHOLKA NAGAR PALIKA

Appearance:

1. Special Civil Application No. 9753 of 1999

MR MB GANDHI for Petitioner No. 1

MR SP HASURKAR for Respondent No. 1

HL PATEL ADVOCATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.M.B.Gandhi on behalf of the petitioner and learned advocate Mr.D.D.Vaidhya for

the respondent Nagarpalika.

2. In the present petition, the petitioner has challenged the order which is produced at page.61 of the petition, dated 16th November, 1999 whereby the respondent Dholka Nagarpalika has dismissed the petitioner from service on the basis of the chargesheet dated 7th August, 1999.

3. Learned advocate Mr.Gandhi appearing on behalf of the petitioner has submitted that on 18th May, 1999, one Yadi has been sent to the petitioner wherein certain allegation has been made against the petitioner by the Nagarpalika. Learned advocate Mr.Gandhi has also pointed out that on 18th May, 1999 one criminal complaint has been filed by the petitioner against one Shri Natubhai M. Rawal - Overseer under Section 504, 506 [2] and 323 of the Atrocity Act on 7th May, 1999, chargesheet has been served on the petitioner by the Administrator. Thereafter, reply was submitted by the petitioner against the said chargesheet wherein none of the allegation has been admitted by the petitioner. On the contrary, each charge has been denied by the petitioner with clear explanation and defence. Thereafter, on 27th / 28th October, 1999, Administrator has accepted the inquiry report which was submitted by the inquiry Officer dated 27th October, 1999 and show cause notice has been issued to the petitioner against the said report informing that if the delinquent petitioner herein wants to make submit an explanation against the said report, the same be submitted. That on 27th October, 1999 report was submitted by the Inquiry Officer to the Administrator. Learned advocate Mr.Gandhi has submitted that from perusal of the entire report, for proving the charge against the petitioner as levelled against the petitioner on 7th August, 1999, no one was examined on behalf of the Nagarpalika for proving the charge against the petitioner. Even no other witness has been examined in departmental inquiry to prove the charge against the petitioner. Even the petitioner was also not examined in departmental inquiry but at that occasion, he simply stated that whatever reply given by him against the chargesheet, the same may be considered by the authority. The entire report has been submitted by the inquiry officer on the basis of the documents without being proved in the departmental inquiry by leading proper evidence in presence of the petitioner. Thereafter, objection has been raised by the petitioner that there was no proper inquiry initiated and conducted against the petitioner and no reasonable opportunity was given by the respondent and therefore, the entire inquiry and finding

thereof, is vitiated, by reply dated 1st November, 1999. Ultimately, punishment order has been passed by the Administrator, Dholka Nagarpalika.

4. Learned advocate Mr.D.D.Vaidhya appearing on behalf of the respondent Nagarpalika also not disputed certain factual aspects after perusal of the record placed by the petitioner in the petition. However, learned advocate Mr.Vaidhya submitted that in departmental inquiry, no witness has been examined by the respondent Nagarpalika and even the petitioner was also not personally examined by the inquiry officer but the entire matter has been discussed by the inquiry officer relying upon the documentary evidence. Learned advocate Mr.Vaidhya has also submitted that if the departmental inquiry which has been conducted according to the respondent, is not proper inquiry in consonance with the principles of natural justice, then the respondent is prepared to hold fresh inquiry in accordance with law in respect of the same allegations made by the respondent against the petitioner.

5. Learned advocate Mr.Gandhi has submitted that if other side intends to hold fresh inquiry in respect of the same allegations, then they should first reinstate the petitioner in service and the petitioner should be paid full backwages of the interim period, meaning thereby, the original position of the petitioner prevailing prior to issuance of the chargesheet against the petitioner, should be restored.

6. In respect of the contentions raised by the learned advocate Mr.Gandhi and considering the undisputed facts, what transpires that after chargesheet came to be served on the petitioner and submitting of the reply by the petitioner to the authority, the inquiry officer was appointed by the Administrator and thereafter, he considered the chargesheet and the reply along with relevant documents and gave finding of the inquiry. But in the departmental inquiry, whatever allegation made against the petitioner, for that, no witness has been examined by the respondent before the Inquiry Officer. It is settled law that if any document or complaint or chargesheet or any complaint is required to be proved against the delinquent then, the witness/s should have been examined in the departmental inquiry to prove the complaint / allegation and chargesheet against such employee delinquent but in absence of examination of any witness, chargesheet and the report cannot be proved

against the employee because it requires reasonable opportunity to be given to the delinquent employee to cross examine such witness against the allegation made against the delinquent employee. This is the basic and barest requirement, has not been fulfilled by the respondent and undisputedly, none was examined on behalf of the respondent Nagarpalika to prove the charge against the petitioner in departmental inquiry to prove the charge against the petitioner in departmental inquiry and the petitioner was also not examined in the inquiry proceedings. Therefore, at this stage, it is pertinent to refer the view taken by the Apex Court on the aspect that what is the scope and form of inquiry, in the following cases.

In case of MEENGLAS TEA STATE V. THE WORKMEN, reported in AIR 1963 SC 1719, wherein it is held as under:

"It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him . This is the barest requirement of an enquiry of this character this requirement must be substantially fulfilled before the result of the enquiry can be accepted."

Even in case of S.E. & STAMPING WORKS LTD. WORKMEN reported in AIR 1963 SC 1914, the Apex Court has observed as under :

"An enquiry cannot be said to have been properly held unless, [i] the employee proceeded against has been informed clearly of the charges levelled against him, [ii] the witnesses are examined ordinarily in the presence of the employee in respect of the charges, [iii] the employee is given a fair opportunity to cross examine witnesses, [iv] he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and [v] the enquiry officer records his findings with reasons for the same in his report."

In the case of U.P. WAREHOUSING CORPN. V. VIJAY NARAYAN reported in AIR 1980 SC 840, also the Court

has held as under :

"The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross examine the witnesses relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a shows cause notice for the proposed punishment."

Even this Court also, having considered all three decisions of the Apex Court referred to above, in case of G.S.R.T.C v. C.G.RASADIYA reported in 1993 [1] GLR 442, the Division Bench of this Court has made the following observations which reads as under :

"14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent - Conductors. In both the petitions the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desire. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case further inquiry is not necessary. In this view of the

matter, it cannot be said that the order passed by the Labour Court calls for any interference."

Thus, the Division Bench of this Court has come to the conclusion that when the allegation has been denied the allegations made against delinquent employee, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desire. They also ought to have been given further chance to lead evidence in support of their case. Therefore, according to the view of the Division Bench, this would be the barest requirement of holding an inquiry in this type of grave misconduct.

7. In view of above observations made by the Apex Court in three cases referred to above as well as considering the view taken by the Apex Court and this Court, and considering the undisputed facts which are on record of the case on hands, it is clear that after issuance of the chargesheet on the petitioner and submitting the reply by the petitioner, inquiry officer came to be appointed by the Administrator but in the departmental inquiry, no person was examined in presence of the petitioner to prove the charge against the petitioner and without examining any person / witness for proving the charge, straightaway, the inquiry officer has examined the reply and relevant documents and come to the conclusion that charge levelled against he petitioner is found to be proved. Therefore, the nature of inquiry or the manner in which the inquiry is conducted is against the principle of natural justice and no reasonable opportunity has been given to the petitioner during the course of departmental inquiry. Therefore, according to my opinion, the entire departmental inquiry is vitiated as against the principle of natural justice and as a result thereof, dismissal order dated 16th November, 1999 requires to be quashed and set aside on that grounds only to enable the respondent to hold fresh departmental inquiry if they so desire.

8. However, at this stage, learned advocate Mr.D.D.Vaidhya has submitted that the petitioner was put under suspension during pendency of departmental inquiry on 18th May, 1999 and he was dismissed from service on 16th November, 1999. Therefore, his submission is that when this Court is inclined to hold fresh inquiry in respect of the same charge then, the petitioner shall have to remain under suspension all through out from the

date of dismissal till fresh inquiry is completed by the respondent. However, he makes it clear that the respondent will pay to the petitioner the subsistence allowance to the petitioner as per the Service Rules i.e. in accordance with Bombay Civil Service Rules ["B.C.S.R." for short] during the interim period from the date of dismissal i.e. 16th November, 1999 till completion of the fresh inquiry by the respondents.

9. Considering above submissions, learned advocate Mr.Gandhi vehemently submitted that the petitioner must be reinstated in service because the dismissal order is required to be quashed and set aside as it is against the principle of natural justice and further emphasized that the petitioner is entitled to full salary of the interim period.

10. Having regards to the submissions made by the learned advocates made by the respective parties and considering the fact that when the departmental inquiry is vitiated because of non compliance of principles of natural justice and since the respondent has agreed to hold fresh inquiry in respect of the same charges, then the status of the employee at the time of dismissal requires to be restored and he shall remain under suspension till the fresh inquiry will be completed by the respondent. Therefore, considering all these facts, according to my opinion, the petitioner is entitled to subsistence allowance of the interim period from the date of dismissal i.e. 16th November, 1999 as per the provisions of B.C.S.R. till fresh inquiry will be completed by the respondent against the petitioner.

11. In the result, present petition is allowed. The order passed by the respondent dated 16th November, 1999 dismissing the petitioner herein is quashed and set aside. However, it is observed that it will be open for the respondents to hold fresh departmental inquiry in accordance with principle of natural justice and as per the provisions of the B.C.S.R against the petitioner in respect of the same chargesheet dated 7.8.1999 and the same is required to be completed by the respondents within six months from the date of receipt of copy of this order subject to cooperation of the petitioner during the course of fresh departmental inquiry proceedings that may be held by the respondents. The respondent - Dholka Nagarpalika is also directed to pay subsistence allowance to the petitioner with effect from 16th November, 1999 according to the provisions of B.C.S.R. which applicable to the respondent Nagarpalika till 30th September, 2003 within one month from the date

of receiving the copy of this order. The respondent Dholka Nagarpalika is further directed to pay continuously the subsistence allowance to the petitioner till completion of fresh departmental inquiry as purported by the respondent against the petitioner. However, it is also observed that it will be open for the respondent Dholka Nagarpalika to reinstate and utilize services of the petitioner if they felt it necessary, otherwise, the petitioner is entitled to subsistence allowance as ordered by this Court above.

Rule is made absolute accordingly.

No order as to costs.

Date : 23.9.2003 [H.K.Rathod, J.]

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